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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,500	06/04/2001	John E. Ware	QMET-201	5112
24972 7590 01/22/2009 FULBRIGHT & JAWORSKI, LLP 666 FIFTH AVE NEW YORK, NY 10103-3198				
EXAMINER				
LE, LINH GIANG				
ART UNIT		PAPER NUMBER		
3686				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09873500	6/4/2001	WARE ET AL.	QMET-201

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The grounds of rejection inadvertently listed claims that were considered canceled. Claims 7, 11, 16, 24 and 28 were previously canceled and should not have been rejected.

Claims 1-6, 8-10, 12-15, 17, 35-38, 41-42, and 44 are rejected under 35 USC 101 as these claims are directed to non-statutory subject matter. A claimed process is patent eligible under 101 if: (1) it is tied to a particular machine or apparatus or (2) it transforms a particular article into a different state or thing. Independent claims 1 and 35 are directed towards a method of assessing the health status or health care of a patient. There is no tie to a machine or apparatus in the body of the claim nor is there a transformation of a particular article towards a different state or thing. Thus the claims are directed towards a patent-ineligible process under 35 USC 101. Furthermore, a nominal recitation in the preamble of structure in an otherwise ineligible method fails to make the process statutory.

Claims 1-6, 8-10, 12-15, 17-23, 25-27 and 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ware et al. (Ware, Jr., John E., Jakob Bjorner, and Mark Kosinski, Dynamic Health Assessments: The Search for More Practical and More Precise Outcomes Measures, The Quality of Life Newsletter, January 1999-April 1999), in view of Lewis (5,059,127).

/M. L./
Examiner, Art Unit 3686

/Jerry O'Connor/
SPE, GAU 3686